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10 Attorneys for Plaintiff  
UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 SOUTHERN DIVISION

14 UNITED STATES OF AMERICA,

No. SA CR 05-254(A)-UA

15 Plaintiff,

GOVERNMENT'S EX PARTE APPLICATION  
FOR LEAVE OF THE COURT TO DISMISS  
INITIAL AND FIRST SUPERSEDING  
INDICTMENTS WITHOUT PREJUDICE  
PURSUANT TO FED. R. CRIM. P. 48(a)

16 v.

17 ADAM GADAHN,  
a.k.a. Azzam al-Amriki,

18 Defendant.

19  
20 Plaintiff, United States of America, by and through its counsel  
of record, the United States Attorney for the Central District of  
21 California, hereby brings this ex parte application for leave of the  
Court to dismiss the Initial and First Superseding Indictments in  
22 this case without prejudice, pursuant to Federal Rule of Criminal  
Procedure 48(a).

23 This application is based upon the attached memorandum of points  
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1 and authorities, the files and records in this case, and any such  
2 additional evidence or argument as may be presented at any hearing on  
3 this application.

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5 Dated: August 28, 2015 Respectfully submitted,

6 EILEEN M. DECKER  
7 United States Attorney

8 PATRICIA A. DONAHUE  
9 Assistant United States Attorney  
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/s/  
14 DEIRDRE Z. ELIOT  
15 Assistant United States Attorney  
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Attorneys for Plaintiff  
UNITED STATES OF AMERICA

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1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2       In considering whether to grant the government leave to dismiss  
3 an indictment pursuant to Rule 48(a), the Ninth Circuit has  
4 instructed that:

5                   Separation of power concerns generally require a  
6 district court to defer to the government's decision to  
7 seek dismissal of a criminal charge because a denial of the  
8 motion would represent an intrusion upon prosecutorial  
9 prerogative. [Citation omitted]. The decision to dismiss  
10 an indictment implicates concerns that the Executive is  
11 uniquely suited to evaluate, and a district court should be  
12 reluctant to deny its request.

13 United States v. Gonzalez, 58 F.3d 459, 462 (9th Cir. 1995). See  
14 also id. at 461 ("In light of the history and purpose of Rule 48(a),  
15 we have . . . required district judges entertaining such requests  
16 [for leave to dismiss] to grant considerable deference to the  
17 prosecutor"); id. ("the district court's discretion to deny leave is  
18 limited"); United States v. Garcia-Valenzuela, 232 F.3d 1003, 1007  
19 (9th Cir. 2000) ("a district court is limited in its ability to  
20 second-guess the government's decisions on whether and what to  
21 prosecute"); United States v. Hayden, 860 F.2d 1483, 1487 (9th Cir.  
22 1988) ("While the judiciary has been authorized to supervise  
23 prosecutorial decisions to dismiss, Rule 48(a) was not enacted for  
24 the purpose of usurping the traditional role of the prosecutor to  
25 determine whether to terminate a pending prosecution").

26       Publicly available information indicates that defendant is  
27 deceased. The death of defendant abates pending criminal  
28 proceedings. United States v. Rich, 603 F.3d 722, 724 (9th Cir.

1 2010); see also United States v. Oberlin, 718 F.2d 894, 895 (9th Cir.  
2 1983). Accordingly, based on Rule 48(a) and the applicable law, the  
3 government respectfully requests leave to dismiss the pending Initial  
4 and First Superseding Indictments in this case without prejudice.

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6 Dated: August 28, 2015 Respectfully submitted,

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14 \_\_\_\_\_/s/  
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